

July 6, 1999

Sumner E. Nichols, II, Esquire
NICHOLS & MYERS
Suite 104
900 State Street
Erie, PA 16501-1425

Dear Mr. Nichols:

ISSUE: This is in response to your May 18, 1999 letter in which you inquired whether it would be permissible for Oliver's Tavern, Inc., holder of Restaurant Liquor License No. R-4529, to conduct an underage night on Wednesday evenings. The event, as you have it planned, would occur on Wednesday nights and a portion of the proceeds would be contributed to local universities. You specifically inquire whether it would be permissible to run such a program on a weekly basis or whether it can only be conducted on a less frequent basis.

OPINION: Section 493(14) of the Liquor Code prohibits minors from frequenting licensed premises. There are several exceptions to this rule. Minors can be on licensed premises if they are with their parent, legal guardian or under proper supervision. [47 P.S. Section 4-493(14)]. Proper supervision is defined in section 493(14) as the presence of one person twenty-five years of age or older for every fifty minors or part thereof who is directly responsible for the care and conduct of such minor or minors while on the licensed premises. The minors must be constantly within the sight or hearing of their supervisor. A licensee or any employee or security officer of the licensee cannot be the supervisor.

The classic example of proper supervision would be a family member over the age of twenty-five who is not the parent such as a grandparent, uncle, aunt, etc.

When there are minors present on your licensed premises as part of a social gathering, there are additional rules that apply. Such gatherings must be segregated from the remainder of the licensed premises. In the event such gathering cannot be segregated from the remainder of the licensed premises, all alcoholic beverages must either be removed from the licensed premises or placed under lock and key during the time the gathering is taking place. Notice of such gathering shall be given to the Board. You previously gave such notices in 1996 and 1997. There is no limit on the number of such gatherings as long as they are scheduled for specified dates.

Thus, it would be permissible to have underage social gatherings on your licensed premises on some kind of regular basis so long as such minors are under proper supervision. To the extent that the

proposed supervisors consist of people with a connection to the licensee, such as employees, security officers or the licensees themselves, it does not constitute proper supervision. However, supervisors who are associated with the minors such as family members, teachers, counselors, etc. could constitute proper supervision provided they are twenty-five years of age and older.

Finally, the Liquor Code also allows minors to be on licensed premises at those retail premises whose sales of food and nonalcoholic beverages are equal to seventy percent or more of the combined gross sales of both food and alcoholic beverages. However, minors who are on licensed premises because of the food sales of the licensee may only be in rooms in which table service or take-out service of alcoholic beverages is occurring. In addition, no alcoholic beverages may be served at any table in which a minor is present if the minor's presence is authorized solely through the food sales of the licensee.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

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LCB Advisory Opinion No. 99-242